

Appl. No. : 10/698,236
Filed : October 31, 2003

REMARKS

Applicant Elects Claims 21-25 WITH TRAVERSE

The election of Group 2 (Claims 21-25) is being made with traverse. The restriction requirement is improper.

Claim 21 recites a wireless communications hub that is adapted to transfer data to and from the portable electronic device. At paragraph 112 of the present application, Applicant stated

[0112] While the illustrated embodiments feature an infrared transceiver as a wireless communications hub for the exercise device, other suitable communications protocols also can be used. In one particular arrangement, any other suitable communications protocol can be used with a holding device such that communication between the exercise device and a portable electronic device can be enabled. For instance, the communication can occur by telemetry, directional antennae, blue tooth and the like. Preferably, the range of communication is limited such that communication is facilitated between a single portable electronic device and a single exercise machine. More preferably, the range of communications is less than about three feet. Even more preferably, the range of communications is less than about one foot. In the illustrated arrangement, the range is less than about six inches such that unintended control of an exercise machine is less likely.

Thus, a wireless hub encompasses infrared ports and, as defined in the specification, is used to generically cover infrared ports. Claims 1-20 recite infrared limitations in various manners to provide differing breadths of protection. Claims 21-25 provide additional breadths of protection through the use of generic language. Thus, a genus is recited in Claim 21 and a single species is recited within Claims 1-20. This comports with the rules and restriction is improper (see MPEP 806.04(e)).

Moreover, the restriction requirement improperly treats the claims as a combination/subcombination fact scenario. To be properly restricted, claims must be both "independent" and "distinct." To be "independent," the claims must be unconnected in design, operation and effect. In this case, the claims are clearly connected in design, operation and effect. The claims each recite either infrared or other wireless communication constructions that allow communication between an exercise device and a portable electronic device. The difference in the claims simply is in reciting the "genus" (i.e., the wireless communications hub)

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and reciting the "species" (i.e., infrared transceivers, etc.). Thus, the claims are not independent. If the claims are not "independent," then they are considered "related."

Related claims are not distinct if they are connected in at least one of design (i.e., structure or method of manufacture), operation (e.g., function or method of use), or effect. Here, the claims in both groups are connected in design (i.e., swapping infrared port or any of a number of other types of wireless ports), operation and effect. In particular, the claims overlap in scope. Thus, the claims also are not distinct.

Finally, in order to properly examine the claims reciting a "wireless communications hub," the Examiner necessarily must search the prior art relating to infrared configurations, especially since such a construction is recited in Claim 22, which depends from Claim 21. Thus, the Examiner cannot realistically argue that searching the species claims will be a significant burden relative to searching the genus claim.

Because the claims are not independent or distinct, restriction is not proper. Moreover, because any added searching would be necessary and not a serious burden, restriction is not proper. Examination of all pending claims in the present application is respectfully requested.

Applicant has added Claims 26-57.

Claim 26-57 have been added to provide additional breadth of protection to the claims. Examination of these additional claims is respectfully requested.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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